

Jesselyn Radack at FFF Conference 2008, 6 of 6

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Jesselyn Radack on "Conscience Over Career: The Prosecution of the American Taliban" at the Future of Freedom Foundation's <http://fff.org> Restoring the Republic, 2008.

Jesselyn Radack is a former U.S. Department of Justice ethics adviser who came to prominence as a whistleblower after she objected to the government's treatment of John Walker Lindh (the "American Taliban" captured during the 2001 invasion of Afghanistan), having argued that, since a lawyer had been retained to represent him, he could not be interrogated without that lawyer present.

Playlist of Radack's lecture: http://www.youtube.com/view_play_list?p=8098DDCFDF68A64D

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two quick questions one you use the word intentional when you said that John Lynde was prohibited from saying that the FBI had used intentional Dada dadada so my first question is could he say that they accidentally I mean is that a is that a you know man takes thing and the second question is what are the consequences if you or someone else at your level of whistleblowing or not whistleblowing actually but if you disobey the gag orders what are the consequences that have been laid out to you I made you can be put in jail which I mean I applaud journalists who are willing to test that I have the three young kids right now and I yeah you know I can't you know there's there's someone I've already spent hundreds of thousands of dollars trying to combat this and I'm willing to talk about it up to a certain point but again right now you have they struck the fear of God in me yes because of all the petty things are willing to do I take it very seriously when they say don't talk about certain things in terms of that language we're Lynde had to swear that he had not been intentionally mistreated I think that is a tacit admission by the government that he was mistreated and by putting in you know not intentionally they were basically bulletproofing themselves from they also made him stayed out right that

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they also made him stayed out right that he would never bring a future claim based on torture but they were insulating themselves and bulletproofing themselves from a lawsuit later on for Eighth Amendment cruel and unusual violations I got have to ask you a few minutes ago about the state-secrets privilege while i was walking over the mic you answered the question but but i'm still not satisfied that i understand what's going on here because it seems to me that by invoking the state secret privilege the government is pulling out a club that it can use to knock down anything whatsoever and this club has no existence within either our legal history our legal traditions our Constitution our constitutional jurisprudence or anywhere else so what I'm wondering I'm really quite puzzled why any judge would allow a federal lawyer to walk in the courtroom and invoke the state secret privilege why doesn't he say get the hell out of this court and come back when you know the law some judges have there have been a handful of judges who have done that Louis Fisher who works for the Congressional Research Service if the state secrets expert he has an article in the Harvard journal of long legislation going over exactly what it is how it can be asserted where it came from which was this really screwed up case called Reynolds back in circa in 1950 again where state secrets was asserted

about something that was not really a secret at all some judges have said abson owed to the government when they've said oh this person can't testify because he's an enemy combatant and he will reveal important information

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and he will reveal important information well there are there are procedures set up to handle that in court we have sepa we have the classified intelligent Protection Act we have things set up to hear that so when they're like no we need to create military tribunals where we're going to have the same people be the judge jury executioner and defense attorney and we can't have these people in real court we can and some judges have begun to to say or to challenge the government and other judges who have been very happy Bella to embrace the state secrets privilege have been recently elevated to the Supreme Court well I she ate your answer but you know I'm just compelled to say that this is utterly Stalin istic and that if the Americans tolerate this kind of behavior from their courts these courts have lost all credibility whatsoever okay this is last question I'm getting better 15 minutes five minutes I appreciate Robert X's question I hope that this this might be of interest to you as I've been involved these things for a long time there's been a lot of talk over the years you know with the collaboration of the break the collaboration of the British who had the Official Secrets Act that we have to get something comparable e here you know in the restructuring the reality of national security and there's a lot going on about that for a long time so I think you you know you with your abilities and research ought to look into that I could tell you more offline the second thing I mean about the Official Secrets Act that the British have and you know they're much more tight on it connected with this to it as I've told a couple of other colleagues here one of the things i learned only in 1995 having been

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learned only in 1995 having been involved in some pretty sensitive things is that not only does the intelligence community or the secrets protect sources and methods but liaison remember that word liaison and i assure you that certain other countries that we collaborate with have control over what's releasable we do not have control and including even things that are older than 50 years and I could give details to some of you offline and i think is a very important matter you hear about protection of the sources and methods but also liaison foreign liaison and you can understand some of them say well if i'm going to give you things and then you're like Swiss cheese you know you're not going to go so it's a complicated matter but the question i asked for you ma'am up just briefly i don't want to get you into more trouble but maybe Lisa the history and if this that goes into trouble please don't say anything but I think of the precedents in the Office of Special Investigation OSI so my friends were very much involved a long time ago at senior level that I've known since I was a little boy said to me someday I might be able to tell you about this I mean it's that serious now I knew that they use evidence of foreign intelligence communities in order prosecute but I'm just wondering if the permanent bureaucracy and justice that they're still lingering things or restructurings even if the OSI is no longer formally there someone told me it might not be actually there on the chart but would you care to comment at least on the history of this OSI or I wish I knew more I mean about the history of OSI and again I talked to people like Lewis Fisher to try to find out more about that secret of the history of the state secrets privilege another office a special investigation yeah I'm sorry I didn't I don't think I said that's fine office of a special investigation um the problem is I think I mean I don't doubt that there is reason to keep certain stuff under cover and keep certain stuff secret but every single document these days is being classified every things

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days is being classified every things are being over classified state secrets privilege as being applied to everything and meanwhile the things that should be secret like CIA agent identities who are undercover are being exposed so you know I don't doubt that there is stuff that validly should be classified or that might validly be subject to some sort of state secret privilege or high-level classification and that kind of thing but when you're classifying ordinary citizens when you're putting them on terrorist watch lists y am a mother of 3

i'm like 100 pounds soaking wet I'm not a terrorist I mean it's a big waste of the taxpayer dollar to be doing that and you know as a lot of people are gagged indefinitely we don't even have the 70-year rule so maybe when I'm you know 99 or 100 or whatever I can talk about certain things unless someone new comes in and unties a lot of the gag but my time is expired I'd be glad to talk to people later I'll be floating around

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